

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

Richard N. Higgins,)	
)	DOCKET NO.: PT-1997-22
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on December 9, 1998, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayer's, Judy and Richard Higgins, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Pete Fontana, field supervisor, and Joan Vinning, residential appraiser, presented testimony in opposition to the appeal.

Testimony was presented, exhibits were received, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as follows:

Lots 1 & 7, Aberdare Estates, County of Cascade, State of Montana (DOR ID numbers 5846000 & 5846600).

3. For the 1997 tax year, the DOR appraised the subject improvements at a value of:

Lot 1 - \$35,670; Lot 7 - \$40,950

4. The taxpayer appealed to the Cascade County Tax Appeal Board on September 15, 1997 requesting a reduction in value to \$9,000 for lot 1 and \$9,500 for lot 7. The stated reason on the appeal form is "Based on purchase price in 1993".

5. In its October 27, 1997 decision, the county board denied the appeal, stating:

After hearing testimony and reviewing exhibits, the Board finds the Dept. of Revenue values placed on the land reflect the true market values. This appeal is disapproved.

6. The taxpayer then appealed that decision to this Board on November 20, 1997, stating:

Based on land values of similar property in the area and the discrepancy of similar property.

7. Through the direct testimony and questioning of the taxpayer's, the value requested for the subject lots was modified to

be approximately \$20,000 per lot.

TAXPAYER'S CONTENTIONS

The taxpayer testified the subject property was purchased at a public auction on October 3, 1992. The actual closing occurred in 1993.

Sale prices from that auction for lots 1 through 8 were (exhibit #1):

<u>Auction Sales</u>	<u>1995 Sales</u>
Lot 1 - \$ 8,500	Lot 6 - \$22,000
Lot 2 - \$ 8,500	Lot 8 - \$56,000
Lot 3 - \$ 9,000	
Lot 4 - \$10,000	<u>1996 Sales</u>
Lot 5 - \$10,000	Lot 3 - \$ 9,000
Lot 6 - \$ 9,000	
Lot 7 - \$10,500	
Lot 8 - \$10,500	

Total purchase price \$191,000/11 sales = \$17,360 (average) or \$11,975 per acre.

1997 Reappraised value	Lot 1 - \$35,670
	Lot 2 - \$33,360
	Lot 7 - \$40,950
	Lot 3 - \$17,000

The taxpayer stated this averaging analysis was the basis for appeal before the local tax appeal board.

Taxpayer's exhibit #2 is a map illustrating the location of subject lots along the Missouri River. The taxpayer compared assessed values of other properties in the area to DOR values on the lots in the subdivision. Based on sales and DOR assessed values, the taxpayer's analysis illustrated the following (exhibits #1, #2 & #3):

Properties adjoining Aberdare Estates:

David Torkelson	
1994 - Sell Price - \$67,000; 20 acres (\$3,350/acre)	
Reappraised value - \$797.00 (\$40/acre)	
Sally Shortridge	20 acres
Reappraised value - \$797.00 (\$40/acre)	

Lynn Miles 7.22 acres
Value \$46,100 (\$6,385/acre)

Properties across the river from Aberdare Estates:

Dan Flanagan 17.7 acres
Reappraised Feb 1996 \$35,400 (\$2,000/acre)

Willow Bend - North of Cascade:

Tom Wilford Lot 11 2.36 acres
Value \$21,800 (\$9,237/acre)

Charles Essegaggers

Lot 16 1.92 acres

Lot 17 1.66 acres

3.58 acres value \$27,900 (\$7,800/acre)

Charles Lunn Lot 18 1.4 acres
Value \$27,900 (\$7,800/acre)

South of Great Falls - Dunes area:

John McVicker 1.4 acres
Value \$20,434 (\$14,500/acre)

Montana Comparable Sales:1

Comp 1 - 5 acres
Value \$51,000 (10,220/acre)

Comp 2 - 3.18 acres
Value \$46,980 (\$14,750/acre)

Comp 4 - 5 acres
Value 451,000 (\$10,200)

The taxpayer's expressed concern about the inequities in market values of neighboring properties as illustrated above.

DOR'S CONTENTIONS

DOR's exhibit A is map illustrating the subject lots along with the sales within Aberdare Estates Addition used to value the subject subdivision.

DOR's exhibit B is the property record cards for the subject lots and illustrate the following:

Lot 1 - 1.49 acres - \$35,670

Lot 7 - 1.65 acres - \$40,950

1 Properties used to value taxpayers residence located on Lot 2, Aberdare Estates.

DOR's exhibit C is a copy of the Computer Assisted Land Pricing (CALP) model and in summary illustrates the following:

Valuation Date = January 1, 1996
Neighborhood: 62A Base Size: 1.5
Base Rate: \$24,548
Adjusted Rate: \$33,571
Monthly Rate of Change: 0.1110567
Overall Rate of Change: 0.02273455

Sale Date	Sq. Feet	Acres	Sales Price	Assessed Value	SP/AV Ratio	Adjusted Price	Adjusted Unit Price	CALP Value
6/95	60,984	1.4	\$37,000	\$10,500	3.52	\$42,888	\$30,634	\$33,464
5/94	69'696	1.6	\$22,500	\$10,400	2.16	\$32,731	\$20,457	\$40,179
12/94	71,874	1.65	\$56,000	\$12,375	4.53	\$72,551	\$44,970	\$41,857

The DOR determined the eight lots within the Aberdare Estates Addition establish a homogeneous neighborhood; therefore, the best indicator of value are those sales that have occurred within the immediate subdivision. Neighborhood 062A was established from these sales.

Mr. Fontana indicated that the CALP model essentially agrees with the taxpayer's argument that Lot 8 sold in excess of the true market value. The model determined a value of Lot 8 at \$41,857 as compared to the sale price of \$56,000.

Mr. Fontana testified the DOR only recognized sales that were determined to be "arms-length" in nature; therefore, the public auction sales were not considered and not included in the DOR data base used to determine land values.

Mr. Fontana testified the period of time the DOR considered sales in establishing land values for the current appraisal cycle is from January 1, 1992 to December 31, 1995.

BOARD'S DISCUSSION

The taxpayer presented the auction purchases of the eight lots within Aberdare Estates Addition and indicated they should be considered an "arms-length" transactions.

15-8-111 MCA. Assessment -- market value standard -- exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

The Board did a comparison of the auction sale price to the value the DOR established for the subject lots in the prior appraisal cycle. That comparison is made from the values found on exhibits #1 and C is as follows:

	<u>DOR Market Value</u>	<u>Auction Price</u>
Lot 3	\$10,500	\$ 9,000
Lot 6	\$10,400	\$ 9,000
Lot 8	\$12,375	\$10,500

Based on the evidence and testimony presented, it is the Board's opinion the purchase of the subject lots at the public auction does not constitute an "arms-length" transaction.

When analyzing the sale of lots 3, 6 and 8, there is a significant appreciation in market value between the DOR's previous appraised values, to the latest sales transactions and the DOR's current market values, as illustrated as follows:

	<u>DOR 1992 Market Value</u>	<u>DOR 1997 Market Value</u>	<u>% Increase</u>
Lot 3	\$10,500	\$33,464	+219%

Lot 6	\$10,400	\$40,179	+286%
Lot 8	\$12,375	\$41,857	+238%

	<u>DOR 1992</u>	<u>1994/95</u>	
	<u>Market Value</u>	<u>Sales Prices</u>	<u>% Increase</u>
Lot 3	\$10,500	\$37,000	+252%
Lot 6	\$10,400	\$22,000	+112%
Lot 8	\$12,375	\$56,000	+353%

The subject lots are vacant and could in fact be put on the market at the owner's discretion. It is apparent that an informed buyer as well as the seller, would consider previous sales transactions in determining a potential purchase price.

Appraisal methodology recognizes when determining land value, the best comparable properties are those which required the least amount of adjustment; therefore, the sales within the Aberdare Estates Addition are the best indicators of value for the subject lots.

One of the taxpayers concerns is that property within the immediate area is being valued less than the subject property; therefore, creating an inequity in DOR land values. The properties however, are of different classifications or located outside the neighborhood designation of the subject.

The Board rejects the taxpayer's arguments in favor of reduced valuation based upon the comparison of their assessments with those located in the adjacent area.

...And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with the

valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much. (Emphasis supplied.) State ex rel. Schoonover v. Stewart, 89 Mont 257, 297 Pac. 476).

It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)). The evidence and testimony in the record supports the DOR's determination of market value.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. The appeal of the taxpayer is hereby denied and the

decision of the Cascade County Tax Appeal Board is affirmed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the Assessor of that county at the 1997 tax year values of \$35,670 for Lot 1 and \$40,950 for Lot 7. The appeal of the taxpayer is therefore denied and the decision of the Cascade County Tax Appeal Board is affirmed.

Dated this 3rd of February, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. MCKELVEY, Chairman

GREGORY A. THORNQUIST, Member